



State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Radionuclide Drinking Water Standards, **R-12-02**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, by 5 p.m. on June 13, 2005, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-440-7714) or email (regulation@dhs.ca.gov) must be received before 5 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACTS: In any of the following inquiries, please identify the action by using the Department regulation control number, **R-12-02**:

1. In order to request a copy of this regulation package be sent to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.
2. Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Alexis M. Milea, P.E., Chief of the Standards and Technology Unit, Drinking Water Program, at (510) 540-2177.
3. All other inquiries concerning the action described in this notice may be directed to Don Lee, Office of Regulations at (916) 440-7673, or to the designated backup contact person, Linda Tutor, at (916) 440-7697.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (Sections 116270-116751, Health and Safety Code [H&S Code]). California has been granted “primacy” for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances to determine compliance with drinking water standards, including maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. Secondary MCLs are based on consumer acceptance, using parameters such as odor, taste, and appearance as measures of acceptability. The water supplier must notify the Department and the public when a primary or secondary MCL has been violated and take appropriate action. The proposed regulations for radionuclide drinking water standards include primary MCLs and associated monitoring requirements.

On December 7, 2000, EPA promulgated revisions to the existing federal requirements for radionuclides in drinking water [Federal Register 65(236), December 7, 2000, pp 76708-76753]. The revisions include the adoption of a primary MCL for uranium (California’s uranium MCL was adopted in January 1989), a requirement for monitoring radium 228 and minor revisions related to compliance determinations and monitoring frequencies. Since California must adopt federal regulations to maintain primacy for the Drinking Water Program, the proposed regulation package incorporates all the federal revisions, except that California is retaining its 20 pCi/L uranium MCL instead of adopting the federal MCL of 30 ug/L. Also, for consistency with the Department’s implementation of other drinking water standards and the fact that many nontransient-noncommunity water systems (schools serving young people) already voluntarily monitor for compliance with radionuclide MCLs, the proposed regulation applies to this category of systems.

Specifically, the Department proposes to:

- Amend Section 64415 to include the federal analytical method citation, and to provide for the necessary use of Department-approved methods for analytes regulated by the Department, but not covered by EPA-approved analytical methods.

- Repeal the existing Sections 64441 and 64443 and adopt new Sections 64442 and 64443 containing requirements supported by references to the federal radionuclide rule (40 CFR Parts 141 and 142).
- Adopt new Section 64447.3 to incorporate the federal Best Available Technologies (BAT) for radionuclides.

The net effect of the proposed amendments to the radionuclide requirements would be that:

- Both community and nontransient-noncommunity water systems would be required to monitor for and comply with radionuclide MCLs;
- Community water systems would be required to monitor for radium-228;
- Ongoing monitoring frequencies would be reduced for alpha particle activity, radium and uranium, as a function of levels detected;
- Monitoring for beta/photon emitters, strontium 90 and tritium would be required only for systems designated by the Department as vulnerable or identified as contaminated, whereas currently, all surface water systems of a certain size are required to monitor; and
- For systems monitoring quarterly for beta/photon emitters, compliance would be determined on the basis of a running quarterly average.

Adoption of these requirements would satisfy the mandate in Section 116350, H&S Code, and federal primacy requirements related to the adoption of regulations at least as stringent as the federal.

There are a few differences from the federal requirements in the proposed regulations:

- The Department is not required under primacy to adopt the federal MCLs [40 CFR 141.55]; therefore, it has not done so. Further, California has a comparable level, the public health goal.
- EPA adopted reporting levels for radium and alpha particle activity; however, the Department proposes to adopt reporting levels (Detection Levels for the Purposes of Reporting, DLRs) for the other radionuclides as well to insure standardized reporting and adequate data precision and accuracy. [Reference EPA section 141.25(c) and proposed California Code of Regulations [CCR] sections 64442 (a) and 64443(a)]. To insure that laboratories can indeed meet accuracy requirements at the DLR levels, Section 64442(i)(6) is proposed to require a water system to check its laboratory's performance of the radionuclide analytical methods. The reference for this requirement is the following: ANSI N42.23, Measurement and Associated Instrumentation Quality Assurance for Radiobioassay Laboratories, Appendix A.7.6.
- EPA adopted an MCL of 30 ug/L for uranium [40 CFR 141.66(e)]; the Department is retaining its 20 pCi/L uranium MCL adopted in 1989 instead of adopting the less stringent federal MCL, because its policy is to not loosen standards unless there is a change in the risk assessment justifying such a change.

- EPA requires only community water systems to comply with radionuclide MCLs and monitoring requirements; the Department proposes to require nontransient-noncommunity water (NTNC) systems to comply as well for consistency with other California primary MCL regulatory requirements. Many nontransient-noncommunity water systems that are schools already voluntarily monitor for radionuclides to ensure that young people are not subject to this risk in their school settings. There would be one exception to the federal requirements, i.e., NTNC systems would not be required to monitor for radium 228 separately. The reason for the exception is that this monitoring is an effort by EPA to collect occurrence data on radium 228 to help them in making a decision regarding its regulation. The data would not add to public health protection at this time and would be unduly burdensome for NTNC systems.
- EPA allows distribution system monitoring data for radionuclides to be grandfathered to satisfy initial monitoring requirements [40 CFR 141.26(a)(2)(ii)(C)]. California water systems are highly unlikely to have such data, since radionuclide monitoring in the past has been conducted at the sources, as required by existing regulations; therefore, no such provision is necessary and is not proposed in this package.
- EPA provides for entering into “another schedule” with the state for compliance monitoring [40 CFR 141.26(a)(2)(iv), (3)(v)]; the Department did not include this provision, since it does not intend to enter into alternative compliance monitoring schedules due to the difficulties encountered in compliance tracking.
- EPA specifies that systems required to monitor by the Department for beta particle and photon radioactivity cannot apply for monitoring frequency waivers [40 CFR 141.26(b)(3)]; the Department did not include this specification since the proposed regulations do not have a provision for waivers and, therefore, the Department does not anticipate that a system would apply for a non-existing waiver.
- EPA allows the Department to require more frequent monitoring or confirmation samples [40 CFR 141.26(c)(1)]. Since this is a permissive provision involving the Department, while the regulations are mandatory requirements for water systems, it is not appropriate to include this in the regulations.
- EPA specifies that if one sampling point is in violation of an MCL, the system is in violation of the MCL [40 CFR 141.26(c)(3)]. The Department did not include this statement in the proposed regulations because it believes that this is implicit in the regulations.

AUTHORITY: Sections 100275, 106875, 116375 and 116390, Health and Safety Code.

REFERENCE: Sections 116275, and 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: This regulation will result in an estimated

incremental cost of \$1,251,800 during the 13-year period after it becomes effective, with an average cost of \$96,300.

- B. Fiscal Effect on State Government: This regulation will result in an estimated incremental cost of \$69,000 during the 13-year period after it becomes effective, with an average annual cost of \$5,300.
- C. Fiscal Effect on Federal Funding of State Programs: This regulation will result in an estimated net increment cost of \$89,700 during the 13-year period after it becomes effective, with an annual cost of \$6,900.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: This regulation will result in an estimated incremental cost of \$1,210,700 during the 13-year period after it becomes effective with an average annual cost of \$93,100.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The proposed regulation would not impose a mandate on local agencies or school districts that requires state reimbursement. Local agencies should not incur costs as a result of this regulation. However, if they were to incur costs, those costs would be of the following nature:

First, some local agencies would incur costs in their operation of public water systems. These costs would not be the result of a “new program or higher level of service” within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs would be required.

Second, some local agencies could incur additional costs in discharging their responsibility to enforce the new regulations for the small public water systems (under 200 service connections) that they regulate. However, the Department has determined that any increase in the local agency costs resulting from enforcing this regulation would be insignificant. Furthermore, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems, Health and Safety Code Section 101325. Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required, Government Code Section 17556(d).

The Department has made an initial determination that the proposed regulations would not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, Section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the proposed regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and

brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten working days prior to a public hearing.

DEPARTMENT OF HEALTH SERVICES

R-12-02

Dated:

Sandra Shewry
Director